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No. 14-275

# In the Supreme Court of the United States

MARVIN D. HORNE, ET AL.,
*Petitioners,*

v.

UNITED STATES DEPARTMENT OF AGRICULTURE,
*Respondent.*

***ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT***

## BRIEF OF THE STATE OF TEXAS AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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## TABLE OF CONTENTS

Table of Contents ..... i

Table of Authorities ..... ii

Interest of Amicus Curiae ..... 1

Summary of Argument ..... 2

Argument ..... 2

I. Marketing Orders Like the One at Issue Here Affect Texas Agricultural Interests. .... 2

II. The Court Should Grant Certiorari To Clarify This Important Area of the Law. ..... 5

Conclusion ..... 7

## TABLE OF AUTHORITIES

### Cases

*Horne* v. *Dep't of Agric.*,
133 S. Ct. 2053 (2013). ..... 1

*Sheffield Dev. Co.* v. *City of Glenn Heights*,
140 S.W.3d 660 (Tex. 2004). ..... 5

### Constitutional Provisions

U.S. Const. amend. V. ..... 5

U.S. Const. amend. XIV. ..... 5

Tex. Const. art. I, § 17. ..... 5

### Statutes

7 U.S.C. § 602(4). ..... 3

7 U.S.C. § 608(3)(a). ..... 3

7 U.S.C. § 608c(2). ..... 3

Tex. Gov't Code § 2166.055. ..... 5

Tex. Loc. Gov't Code § 561.001. ..... 5

Tex. Parks & Wildlife Code § 13.305(a). ..... 5

Tex. Transp. Code § 224.001. ..... 5

**Regulations**

7 C.F.R. § 906. ..... 1, 4

7 C.F.R. § 959. ..... 1, 4

7 C.F.R. § 981.52. ..... 1

7 C.F.R. § 993.57. ..... 1

76 Fed. Reg. 24292 (Apr. 29, 2011) ..... 4

**Other Authorities**

Henderson K. Yoakum, History of Texas from Its First Settlement in 1685 to Its Annexation to the United States in 1846 (1856) ..... 2

Henry C. Dethloff & Garry L. Nall, *Agriculture, in* The New Handbook of Texas (Ron Tyler et al. eds., 1996) ..... 2

John Robinson & Caroline Gleaton, *Agriculture in Texas, in* Texas Almanac 2014-2015 (Elizabeth C. Alvarez ed., 2014) ..... 3, 4

*Texas Ag Stats*, Texas Department of Agriculture, http://bit.ly/1nctGZQ ..... 3, 4

Wm. B. Bizzell, Rural Texas (L. H. Bailey ed., 1924) ..... 2

## INTEREST OF AMICUS CURIAE

Texas and its citizens have a significant interest in this case, as they did when these parties first came before the Court.[1] Marketing orders promulgated under the Agricultural Marketing Agreement Act of 1937 (AMAA) govern the production of fruits and vegetables grown on a large scale in Texas. *See* 7 C.F.R. § 906 (oranges and grapefruit grown in lower Rio Grande valley); 7 C.F.R. § 959 (South Texas onions). And Texas ranks among the top producers of other crops subject to proposed marketing agreements under the AMAA. Any agricultural product within the scope of the AMAA is potentially subject to appropriation through a marketing order similar to the Raisin Marketing Order in this case. Though that order's reserve requirement does not feature in all AMAA marketing orders, it is not unique to raisins. *See, e.g.*, 7 C.F.R. § 981.52 (almonds); 7 C.F.R. § 993.57 (prunes). Because Texas citizens currently operate under AMAA marketing orders, and because additional marketing orders may issue, Texas has a substantial interest in the questions presented.

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[1] *See* Brief of the State of Texas as Amicus Curiae In Support of Petitioners, *Horne* v. *Dep't of Agric.*, 133 S. Ct. 2053 (2013) (No. 12-123).

## SUMMARY OF ARGUMENT

Agriculture plays a central role in the Texas economy. Texas crops are currently subject to marketing orders promulgated under the AMAA, and are potentially subject to future orders. The Ninth Circuit's holding will substantially affect Texas and other agricultural States.

The decision below has introduced confusion that extends beyond the agricultural interests at stake here. As the Petitioners explain, the Ninth Circuit departed from the holdings of this Court and several other circuits in multiple facets of takings jurisprudence. Courts and litigants alike need clarity in this often-litigated area of the law. The Court should grant certiorari.

## ARGUMENT

### I. MARKETING ORDERS LIKE THE ONE AT ISSUE HERE AFFECT TEXAS AGRICULTURAL INTERESTS.

Since its inception as a republic—and, indeed, long before—Texas has been defined, both culturally and economically, by its agriculture industry. *See, e.g.*, Wm. B. Bizzell, Rural Texas 99 (L. H. Bailey ed., 1924) ("Agriculture in Texas antedated the beginning of recorded history."); Henry C. Dethloff & Garry L. Nall, *Agriculture*, *in* 1 The New Handbook of Texas 60, 60 (Ron Tyler et al. eds., 1996) ("Modern Texas agriculture evolved from the agriculture of prehistoric Texans . . . ."); Henderson K. Yoakum, 1 History of Texas from Its First Settlement in 1685 to Its Annexation to the United States in 1846 6 (1856) ("[T]here is no country of like extent where a greater

variety and quality of agricultural productions can be raised; nor is there any country where the laborer can find a more certain reward for his toil."). Today, agriculture represents an over $25 billion industry in Texas. John Robinson & Caroline Gleaton, *Agriculture in Texas*, *in* Texas Almanac 2014-2015 682, 682 (Elizabeth C. Alvarez ed., 2014). One in seven working Texans is employed in the agriculture industry. *See Texas Ag Stats*, Texas Department of Agriculture, http://bit.ly/1nctGZQ (last visited Oct. 6, 2014).

Texas agriculture is important not only to the State, but also to the national economy. As of 2012, Texas ranked first in the nation in exports of cotton and beef; top five in exports of tree nuts, rice, and planting seeds; top ten in milk, wheat, and grain products; and top fifteen in fresh fruits, fresh vegetables, corn, and sugar. *Texas Ag Stats*, *supra*. This places Texas sixth in the nation in overall value of agricultural exports. *Id.* USDA regulation of agricultural industries thus significantly impacts Texas.

To carry out its policy to "establish and maintain such orderly marketing conditions for any agricultural commodity enumerated in [7 U.S.C.] section 608c(2)," and to "provide, in the interests of producers and consumers, an orderly flow of the supply thereof to market throughout its normal marketing season to avoid unreasonable fluctuations in supplies and prices," 7 U.S.C. § 602(4), Congress has authorized the Secretary of Agriculture to "remove from the normal channels of trade and commerce quantities of any basic agricultural commodity or product thereof," *id.* § 608(3)(a). Several

of the "agricultural commodities enumerated in section 608c(2)" are produced on a large scale on Texas farms and ranches,[2] and are subject to the same sort of appropriation the Secretary has exercised against raisin producers.

As noted above, the Secretary has already subjected to marketing orders Texas oranges and grapefruits grown in the lower Rio Grande Valley and onions grown in South Texas.[3] 7 C.F.R. §§ 906, 959. While those orders do not currently require producers to surrender title to their crops as the Raisin Marketing Order does, nothing prevents the Secretary from subjecting these or any other Texas crop listed above to a similar order in the future.

The livelihoods of more than one million working Texans and their families are tied to its agricultural industry. *See Texas Ag Stats*, *supra*. The interpretation of the Secretary's authority under the AMAA, and the takings-clause restraints on that authority, will affect more than one million Texas residents, not to mention millions of other farming families across the nation. The

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[2] These include dairy products, onions, pecans, potatoes, grapefruit, cabbage, watermelons, cucumbers, cantaloupes, squash, peppers, peaches, oranges, carrots, dry beans, tomatoes, grapes, sweet potatoes, and spinach. *Agriculture in Texas*, *supra*, at 683.

[3] The Secretary has considered extending marketing orders to other crops grown in Texas. *See, e.g.*, Proposed National Marketing Agreement Regulating Leafy Green Vegetables, 76 Fed. Reg. 24292, 24307 (Apr. 29, 2011) (including Texas in list of "anchor States that produce the majority of leafy green vegetables in the United States").

issues raised are of deep concern to Texas and merit the Court's attention.

## II. THE COURT SHOULD GRANT CERTIORARI TO CLARIFY THIS IMPORTANT AREA OF THE LAW.

As a sovereign, Texas exercises condemnation authority, subject to the Constitution's public-use requirement and the requirement to provide just compensation for any property taken. U.S. Const. amends. V and XIV. The Texas Constitution imposes a similar limitation. *See* Tex. Const. art. I, § 17. Texas and its political subdivisions use the condemnation power to expand highways,[4] manage flood-control efforts,[5] provide park and recreation facilities,[6] and preserve historical sites.[7] And because disputes often arise over how much compensation is "just," Texas frequently finds itself litigating this issue.

Texas courts and litigants look to federal jurisprudence when resolving disputes under the state and federal takings clauses. *See, e.g.*, *Sheffield Dev. Co.* v. *City of Glenn Heights*, 140 S.W.3d 660, 669 & n.38 (Tex. 2004) (collecting cases). As the Petitioners observe, the decision below muddies the waters in this area, creating splits in multiple facets of takings jurisprudence, including whether personal property can be subject to the per se takings rule, whether

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[4] Tex. Transp. Code § 224.001.

[5] Tex. Loc. Gov't Code § 561.001.

[6] Tex. Parks & Wildlife Code § 13.305(a).

[7] Tex. Gov't Code § 2166.055.

regulatory-takings cases can inform physical-takings cases (and vice versa), and whether the just compensation requirement applies when a property owner retains some kind of interest or benefit. Pet. 16-20, 25-29.

Certainty in this area of the law is paramount, not only for Texas courts (and those of every other State), but also for its citizens and corporations, who order their affairs around their expectations of the rights they hold in their property. The decision below has introduced uncertainty to an area of law that extends well beyond agricultural interests. It sows confusion for both property owners and condemnors. The Court should grant certiorari to prevent any further mischief that may derive from the decision below.

## CONCLUSION

The Court should grant certiorari.

Respectfully submitted.

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